IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Case No. 77-1044

CARAVEL OFFICE BUILDING COMPANY,
A District of Columbia limited partnership, and
CLIFFORD J. HYNNING,
Managing General Partner of said limited partnership,
Petitioners,

v.

BOGLEY HARTING MAHONEY &
LEBLING, INC., A Maryland corporation,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

FRANK E. BROWN, JR.
Barham, Radigan, Suiters & Brown
2009 North Fourteenth Street
Arlington, Virginia 22216

CLIFFORD J. HYNNING
Attorney for Petitioners
and also appearing pro se,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: 232-0775

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Petitioners, Caravel Office Building Company (hereinafter called the "D.C. Partnership Debtor") and Clifford J. Hynning (hereinafter called the "Partner") pray that a writ of certiorari issue to the Supreme Court for the State of Virginia.

OPINIONS BELOW

The Circuit Judges for Arlington County, Virginia, issued various orders on pleas and motions (pp. 15a-16a, 8a-9a) and a typewritten letter-opinion, dated December 23, 1976, reprinted at pp. 5a-7a; the trial court's judgment order dated

January 14, 1977, reprinted on pp. 5a-7a, and the memorandum judgment of the Supreme Court of Virginia, dated October 25, 1976, reprinted at p. 4a.

JURISDICTION

The Court's jurisdiction is invoked under 28 USC 1257(3).

QUESTIONS PRESENTED

1. Is the due process clause of the 14th Amendment to the Constitution of the United States violated if a forum state, without consent,

a. exercises jurisdiction over a non-resident limited partnership without even any "minimal contacts" with the forum state?

b. serves process on a non-resident partnership, without even any "minimal contacts" with the forum state, at the personal residence (non-business) of one of the partners in the forum state?

2. Where a transaction is admittedly governed by extra-state law on usury, by the settled rules of the conflict of laws, did the forum state violate the full-faith-and-credit clause of Article IV, §1 of the Constitution of the United States by refusing to apply such extra-state law in fact, while formally professing to do so?

CONSTITUTIONAL PROVISIONS AND STATE STATUTES INVOLVED

1. Article IV, §1 of the Constitution of the United States which reads in part, as follows:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other state . . ."

2. The 14th Amendment, §1 to the Constitution of the United States, which reads, in part as follows:

> ". . . [nor] shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

See Appendix, p. , for excerpts from the District of Columbia Code.

STATEMENT OF THE CASE

This case comes to the Supreme Court on a *per curiam* affirmance by the Virginia Supreme Court of the orders and judgment of the Circuit Court of Arlington County (pp. 5a-7a). A complaint was filed on February 18, 1976, Chancery No. 26191, by a Maryland corporation (hereinafter called the "Maryland Creditor") on a note against a non-resident limited partnership. The complaint also named as defendants a general partner residing in Arlington, Virginia, and another general partner residing in Baltimore, Maryland. The sole maker and obligor of the note (without any endorsement guaranty) was the D.C. partnership debtor itself. The note recited on its face that it "was delivered in the District of Columbia by a limited partnership organized and doing business in the District of Columbia, is secured by real property located in the District of Columbia, and is to be governed by the laws of the District of Columbia" (p. 17a).

Service of process was made by taping two copies of the complaint on the door of the personal home residence of

a partner in Virginia (p. 18a). One copy of the complaint was marked for "The Caravel Office Building Co., a District of Columbia partnership, Serve Clifford J. Hynning, General Partner, 3700 Military Road, Arlington, Virginia." Another copy of the complaint was named "Clifford J. Hynning at 3700 Military Road, Arlington, Virginia." Service of process was never effected on another general partner, Carol H. Smith, in Baltimore, Maryland, obviously beyond the reach of the long-arm statutes of Virginia.

The D.C. debtor partnership was exclusively engaged in a peculiarly localized business in the District of Columbia, i.e., the ownership and management of an office building, and has throughout its existence had no offices at any address in Virginia, has conducted no business or other activities there and has no other contacts with Virginia save for the fact that one of its partners personally has lived there. That partner has carried on no business of any kind whatsoever on behalf of the partnership in Virginia. He is a member of the bars of Illinois and D.C., but is not a member of the bar of Virginia. The happenstance of his home in Virginia was the sole reason the partner was served in this cause.

Petitioners appeared specially to file a motion to quash service (p. 19a) and a plea in abatement (p. 23a) with attached affidavit (p. 21a). Petitioners prayed that the service of process be quashed and that the Virginia Court dismiss the action as well on grounds of forum non-conveniens, subject to the condition volunteered by the petitioners in their pleas that the partnership debtor and partner accept service in the District of Columbia. The pleas were summarily overruled by Judge Russell on April 14, 1976 (p. 15a). At a subsequent hearing Judge Russell ruled that the defense of the statute of limitations be stricken from the answer (p. 8a).

Trial without jury was held on October 13, 1976 before Judge William L. Winston.

The Maryland creditor had initially offered the D.C. debtor its mortgage banking services after the Maryland creditor learned that one of the largest insurance companies in the United States had rejected the D.C. partnership debtor's loan application on the ground that the size of the D.C. partnership debtor's land was insufficient to support an economical and modern office building. The Maryland creditor insisted that its economic analyses showed that the small site was economically viable and that it was confident of its judgment that the Maryland creditor could obtain the necessary financing, and also wanted to use part of its resultant brokerage fees to acquire an equity participation in the project. As it was, the building income never met costs and expenses, the Maryland creditor dropped its option for an equity participation, and the loans went into default. See Trial transcript 68-77.

This action arose out of a loan made by the Maryland creditor, a mortgage banker licensed to do a mortgage banking business in the District of Columbia, to the D.C. partnership debtor in the principal amount of $93,227.21, for the completion of construction of an office building in the District of Columbia. The Maryland creditor's relationship to the D.C. partnership debtor in March, 1968, involved five separate but simultaneous transactions for which the Maryland creditor was paid up-front fees and received repayment of prior loans out of the land proceeds (p. 27a) follows:

1. The Maryland creditor brokered a sale-leaseback of land from the D.C. partnership debtor to the insurance company, for a fee of $11,700.

2. The Maryland creditor brokered a permanent loan from the insurance company, for a fee of $9,220.

3. The Maryland creditor brokered a bank construction loan for a fee of $9,220.

4. The Maryland creditor itself made a "gap" loan to the partnership debtor for an up-front fee of $9,000, in addition to the 8% interest specified in the gap loan note.

5. The Maryland creditor was repaid out of the proceeds of the sale-leaseback prior loans secured on the said land aggregating approximately $65,740. See Defendants' Exhibit 2 in the Trial record.

The fourth financial transaction was aptly characterized by the Maryland creditor itself as a gap loan – to fill the gap between the funds needed for the completion of the building and the outstanding loan commitments. If this gap were not filled, the Maryland creditor could lose brokerage fees on the various transactions and would defer loan repayments to it, in the aggregate amount of approximately $104,880.

The Maryland creditor issued a gap loan commitment directly to the partnership debtor that the creditor would loan an amount up to $100,000, providing said funds "were required and used for the purpose of paying for tenant finishing" in the office building. This commitment ran directly from the Maryland creditor as lender to the partnership debtor as borrower; it involved no third party, as in the case of the construction loan (bank), the permanent loan (insurance company), and the sale-leaseback agreement (insurance company).

The Maryland creditor demanded an effective interest rate of 12% on the gap loan note, the same 12% interest charged in two prior, but then still outstanding, loans made by the same Maryland creditor on the same site to the partner. The loan was structured to give the Maryland creditor the 12% return while a lawful rate of interest of 8% under D.C.

law would appear on the face of the note. See Trial transcript 97, 105, 111. The note in question was originally due and payable December 31, 1970, but on January 29, 1971, an extension agreement was executed, whereby the note was payable on demand. Demand for payment in full was made in 1972.

The trial court:

1. Refused to quash service of process on defendant described as

> "The Caravel Office Building Co.,
> a District of Columbia partnership
> Serve: Clifford J. Hynning, General Partner
> 3700 Military Road
> Arlington, Virginia"
>
> CLIFFORD J. HYNNING, et al
> 3700 North Military Road
> Arlington, Va. (p. 18a).

2. Overruled (p. 15a) the motion for dismissal on the grounds of forum non-conveniens on the condition volunteered by the petitioners they accept service in the District of Columbia, as specified in their pleas and motion papers (pp. 19a-20a, 23a-26a);

3. Struck from the answer the defense of the District of Columbia statute of limitations (p. 8a);

4. Found that the relationship of the note transaction to the District of Columbia "is a reasonable one and the contracting parties may agree upon the applicable law" (p. 10a);

5. Ruled that "Under the law of the District of Columbia, a front-end payment made to the lender or his agent is considered to be interest" (p. 11a);

6. Characterized the District of Columbia's usury statute as "broad, expansive and borrower oriented" (p. 11a);

7. Ruled that cases in the District of Columbia have "*expressed no doubt* [emphasis added] that 'a commission or bonus paid to the same person who is entitled to interest is to be considered as additional interest' " (pp. 11a-12a);

8. Obfuscated the $9,000 fee by holding that such fee was part of a total financing package which included the permanent financing, the construction loan, the sale-leaseback and the commitment for the gap loan" (p. 12a), without stating anywhere in the opinion that the Maryland creditor's own contemporaneous interoffice memorandum showed separate dollar invoicing for each of the components of the financing package – *op. cit.*, pp. 5-6, citing Exhibit D reprinted at p. 27a.

9. Postulated scienter in a usury case by requiring evidence of "corrupt intent to conceal it under an ostensibly lawful contract or transaction. 91 CJS, Usury §114" (p. 13a);

10. Held that "The evidence in this case is insufficient to lead the court to conclude that this transaction which was readily susceptible to a valid and legal construction, was in fact usurious" (p. 14a).

By judgment order dated January 14, 1977, the Virginia court granted judgment in favor of the creditor in the amount prayed for – $79,760.48 – with interest from July 14, 1972, and costs (p. 5a). Thereafter, the petitioners timely filed a notice of appeal, and a petition for a writ of error but this appeal was denied by the Supreme Court of Virginia on October 25, 1977.

REASONS FOR GRANTING THE WRIT

The arguments in support of this petition are limited to the Constitution of the United States under the due process clause of the 14th Amendment and under the full-faith-and-credit clause of Article IV, §1.

The case authorities on constitutional aspects of partnerships are admittedly sparse. But this sparseness is not because the issues are not important today. The very sparseness of the precedents is a measure of the importance of this case before this Court, for there is a widespread need to set forth clearly the basic requirements of the Constitution on extra-state litigation involving non-resident partnerships. These litigation problems are particularly troublesome in metropolitan areas on the verge of state lines, as here in the Washington metropolitan area, but they exist across the country. It is increasingly common for partnerships owning commercial real estate to have partners who reside in different states. A relatively recent statutory creation, the limited partnership has proven to have great practical utility in the ownership and development of real estate on a commercial scale throughout much of the United States today. These developments may be grossly distorted if not prejudiced or endangered by the kind of judicial process exhibited by the forum state in this cause.

The full-faith-and-credit argument also is of paramount importance to the modern commercial world where parties to a contract frequently endeavor to set forth in advance, through the exercise of what conflict of laws calls "party autonomy" in the choice of law, by specifying the law to govern future disputes. American Law Institute, Conflict of Laws, 2nd §187.

1. The forum state lacks constitutional power under the due process clause of the 14th Amendment to exercise jurisdiction over a non-resident limited partnership, exclusively engaged in a peculiarly localized business in another state, i.e., an office building, without having even any "minimal contacts" with the forum state.

At the very outset of the Virginia litigation the petitioners challenged the jurisdiction of Virginia over the non-resident limited partnership by filing a motion to quash service and a plea in abatement. The Virginia court summarily denied the motion and plea in abatement without any inquiry as to any "minimal contacts" of the non-resident partnership debtor to the forum, so long as the forum had under its territorial control the person of a Virginia resident who was a partner. The fact that this person merely resides in Virginia as the forum state and has conducted no partnership business whatever in Virginia and therefore cannot be said to be "found" in the forum state in any representative capacity on behalf of the D.C. partnership debtor should have been a matter of concern to Virginia as the forum state in this cause. Petitioners' argument was pressed on appeal under the "contact" ground.

This case is controlled by the rationale announced by this Court last June in *Shaffer v. Heitner,* ___ U.S. ___, 97 S.Ct. 2569 (1977), where a near-unanimous Court concluded (pp. 2584-85) "that all assertions of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." This conclusion came after a detailed analysis of the development of case authorities, starting with *Pennoyer v. Neff,* 93 US 714 (1878), which arose prior to the 14th Amendment but was

decided afterwards, and the strong trend away from justifying state jurisdiction on the court's power over the person of the defendant or his property to the test of "minimal contacts" between the forum and the defendant and the litigation. The classic statements are *International Shoe Company v. State of Washington,* 326 US 310 (1945), *Hanson v. Denckla,* 357 US 237 (1958) and, most recently, *Shaffer.*

International Shoe laid down (p. 319) following test: "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations." *Hanson* illustrates a minimal requirement under the due process clause of the 14th Amendment, as follows:

"But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are prerequisite to its exercise of power over him. . .

"The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself

of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." At pp. 250-53.

The rationale of *International Shoe* was fully endorsed by this Court in *Shaffer* and extended (p. 2580) against all assertions of state court jurisdiction over non-residents, individuals, corporations or other entities. It carefully noted (p. 2580) that *International Shoe* was not confined to a corporate defendant and, of course, *Shaffer* dealt particularly with individuals. In reviewing the trends since *Pennoyer*, *Shaffer* pointed out that the "relationship among defendants, the forum, and the litigation, rather than the mutually exclusive sovereignty of the states on which the rules of *Pennoyer* rest, became the central concern of the inquiry into the personal jurisdiction." *Shaffer* emphasized that (p. 2584) that " 'traditional notions of fair play and substantial justice' can be readily offended by the perpetuation of ancient forms that are no longer justified by the adoption of new procedures that are consistent with our basic constitutional heritage." The example of "an ancient form without substantial modern justification" in *Shaffer* was the ownership of property by the non-resident defendants in the forum state. Branding as a "fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property," *Shaffer* held the continued acceptance of that fiction and ancient form "would serve only to allow state court jurisdiction that is fundamentally unfair to the defendant." Thus *Shaffer* held that property owned in the forum state by non-resident individuals, wholly unrelated to the cause of action, was not a sufficient basis for state court jurisdiction in rem.

Applying *Shaffer* here, it would necessarily follow that the location within the forum state of the personal home

of a partner of a non-resident partnership engaged exclusively in a peculiarly localized business in another state does not furnish any basis for asserting state court jurisdiction over the limited partnership, whether on the basis of the property or the personal domicile of a partner not engaged in any partnership business or activities in the forum state.

There are no decisions of this Court expressly dealing with the jurisdiction of a forum state over a non-resident partnership. *Sugg v. Thornton*, 132 U.S. 524 (1889) dealt with the jurisdiction of the forum state (Texas) over a resident partnership (in Texas), but stressed the inability of the forum state to reach the personal assets of a non-resident partner who was not served within the forum state. A reasonable implication is that a non-resident partnership could probably not have been bound by the Texas judgment. There are a few state court decisions, collected in various annotations of ALR, holding that a non-resident partnership for purposes of jurisdiction is to be treated in substantially the same way as a non-resident corporation in applying the doctrine of "minimal contacts". Also see 2 Moore Federal Practice §4.25 and cases there cited. The Annotation in 10 ALR 2nd 200 supplies the answer why there are so few cases: "It is very rare that one finds a non-corporate business organization which crosses state lines."

It is undisputed on this record that the D.C. partnership debtor, who was the sole obligor under the note, had none of the constitutionally required "minimal contacts" with Virginia so that it could constitutionally assert jurisdiction. By denying the writ of error the Supreme Court of Virginia held that the personal residence of a general partner without any conduct of partnership business by such partner in Virginia in and of itself supplies the constitutionally neces-

sary "minimal contact" by the D.C. non-resident partnership debtor with Virginia so as to justify the jurisdiction of the Virginia court. Obviously, an office building located in the District of Columbia can hardly be said to cross the line into Virginia, absent proof of some activity or contact with Virginia (pp. 21a-22a). Here the affidavit supporting the motion to quash service and the plea in abatement set forth that there were no contacts whatsoever between the non-resident limited partnership and Virginia. The gross attempt by the Maryland creditor, by merely typing the name and address on the face of the complaint of the District of Columbia limited partnership at the personal residence of one of its partners in Virginia is shocking.

By no stretch of the imagination can a creditor by its own fiat assign an address to the D.C. non-resident partnership at the personal residence of one of the partners. In no way can that D.C. non-resident partnership be "found" at the personal address of a partner unless some partnership activity or business is transacted at such an address. This was recognized long ago by the American Law Institute, *Restatement of Judgments* where it said: "The mere fact that one of the partners or members of the association is found within the State is not a sufficient basis for exercising jurisdiction over the partnership or association." §24, at p. 115. Moreover, the summons was not delivered in person in the case of either the D.C. partnership debtor and the general partner, who was a resident of Virginia. The complaint and summons were taped on the front door of the personal residence of the general partner. This was hardly orderly service in itself under the law.*

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* Rule 4(d)(3) of the Federal Rules of Civil Procedure do not permit the service of process on a non-resident partnership by leaving process at a partner's "dwelling house or usual place of abode with some person of suitable age and discretion then residing there." That is only in the case of service on an individual. Quoted language is from Rule 4(d)(1) which so permits.

The Virginia court's uncritical acceptance of the bare-faced attempt of the Maryland creditor to plant the D.C. non-resident partnership in the Virginia home of a general partner, absent any "contact" whatsoever of the D.C. non-resident partnership with Virginia, is a gross transgression of the due process clause of the 14th Amendment. It necessarily follows that if the Virginia court had no jurisdiction over the D.C. non-resident limited partnership, which was the sole maker of the note sued upon, and cannot subject the D.C. non-resident partnership to liability thereunder. It further follows from the lack of constitutional jurisdiction over the D.C. non-resident partnership, the Virginia court cannot impose any partnership liability on the partner, who, by happenstance lives in Virginia and such living is the sole contact with the Virginia court. A partner is liable only as an incident of the partnership; and if the partnership is not liable, the partner is not liable. 60 Am. Jur. 2nd, Partnerships, §160.

Parenthetically, it was argued in the Virginia courts that by virtue of the choice-of-law provision on the face of the notice that the transaction was "to be governed by the law of the District of Columbia," meant that this included the whole law of the District of Columbia without exception. This would, of course, include the Federal Rules of Civil Procedure. The Virginia court said this was inconvenient, since it was not familiar with the law of procedure and remedies of the District of Columbia, and denied the effort on the part of the petitioners to have such law applied. As a non sequitur, the convenience of the court led to the inconvenience of the petitioners, whose motion

for dismissal on grounds of forum non-conveniens was denied. The convenience of the Virginia court became not merely the inconvenience of the petitioners but a denial of justice.

2. Virginia violated the full-faith-and-credit clause of Article IV, §1 of the United States Constitution when its courts, demonstrating full knowledge of the District of Columbia law on usury, which is admittedly the governing law in this case, nonetheless refused to apply such law on the ground that D.C. law was "borrower oriented", while formally profession to do so.

In their petition for a writ of error to the Supreme Court of Virginia, petitioners argued that the trial court had conspicuously failed to apply the law of the District of Columbia on usury and limitations of actions on a note made by a non-resident partner, who was the sole obligor under the note, and in accordance with the express terms of the note to be governed "by the laws of the District of Columbia."

The framers of the Constitution in constructing a new Federal government required that rules of private international law could not be wholly left to the States on a basis of comity, with the known possibilities of an overruling local policy of the lex fori. Library of Congress, Congressional Research Service. The *Constitution of the United States: Analysis and Interpretation* (1973), p. 74. Federalism required that the rules of private international law, or conflict of laws as it is more generally known in this country, should be placed on a higher plane of constitutional obligation than interstate comity. Thus was born Article IV, §1 of the Constitution.

The language of the Constitution on the full-faith-and-credit clause initially received a relatively absolutist interpretation in *Chicago and Alton Railway v. Wiggins Ferry Company*, 119 US 615 (1887), which held that the defendant in a transitory action was constitutionally entitled to have "the public acts of every state be given the same effect by the courts of another state that they have by law and useage at home." But this doctrine has met with substantial modification with the passage of time and growth of the nation and the requirements of our economy. The inflexible rule of *Alton* has given way in a series of cases involving torts, workmen's compensation, divorce-custody-support, insurance, etc. There have been very few cases involving commercial contracts. The leading case is *Alaska Packers Association v. Industrial Accident Commission of California*, 294 US 532 (1935), where Chief Justice Stone laid down the requirement of a balancing of the conflicting governmental interests of two or more states whose laws may collide in the resolution of litigation. The trend in *Alaska* was away from a "rigid and literal enforcement of the full faith and credit clause" (at p. 547) to the duty of this Court to

> "determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another. . . . The necessity is not any the less whether the statute and policy of the forum is set up as a defense to a suit brought under the foreign statute or the foreign statute is set up as a defense to a suit or proceeding under the local statute. In either case, the conflict is the same. In each, rights claimed under one statute prevail only by denying effect to the other. In both the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own stat-

utes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight."

The critical question under the full-faith-and-credit clause is what was the governmental interest of Virginia in this suit by a Maryland corporation against a D.C. limited partnership on a note admittedly governed by the laws of the District of Columbia? No state had any significant contact other than District of Columbia. The only connection with Virginia is that one of the partners personally resides in Virginia. This can be no predicate for a governmental interest by Virginia in the obligations of a D.C. partnership debtor to a Maryland corporation. Traditionally, the governmental interest that arises in conflict cases under the full-faith-and-credit clause is the concern of the forum state to protect its own residents from overreaching claims by a foreign corporation. Clearly there is no governmental interest in Virginia to protect the interests of a Maryland corporation at the expense of a Virginia resident that would override the clearly evidenced governmental interests of the District of Columbia.

The D.C. interests and contacts are:

1. The creditor is a Maryland corporation, licensed to do a mortgage banking business in the District of Columbia, which is suing on a loan it made in the District of Columbia evidenced by a note delivered in the District of Columbia.

2. The maker of the note is a D.C. limited partnership exclusively engaged in a peculiarly localized business in D.C., namely, the ownership and management of an office building in the District of Columbia.

3. The note was secured on real estate located in the District of Columbia owned by the D.C. partnership in its own name.

4. The only business offices of the D.C. limited partnership are located in the District of Columbia.

5. The note contained on its face an express stipulation that it is "to be governed by the laws of the District of Columbia."

6. The general partner who manages the affairs of the D.C. limited partnership has his only offices in the District of Columbia where the partnership records are kept and the business of the partnership is transacted.

7. The only connection with Virginia is that the general partner of the D.C. limited partnership maintains his personal residence in Arlington, Virginia. He conducts no partnership business whatsoever in Virginia..

8. The D.C. limited partnership has never conducted any business in Virginia.

The balancing of the conflicting governmental interests of Virginia and the District of Columbia is very simple on the facts of records. There is no governmental interest of Virginia in this case under the rule of *Alaska Packers*.

It follows, therefore, that Virginia was constitutionally compelled to give full faith and credit to the D.C. law on usury and limitations of actions. This the Virginia court did not do. The Virginia court clearly knew what it was doing for it said there was "no doubt" under D.C. law that usury arose where anything of value was paid in addition to the rate of interest specified on the face of the note. Here that payment was $9,000. There can be "no doubt" that under D.C. law there

was usury in this case. Similarly, there is "no doubt" that the Virginia court refused in fact to apply such D.C. law. The only reason given is the Virginia court's characterization of D.C. law as "broad, expansive and borrower oriented". The Virginia court postulated proof of scienter or "corrupt intent" by the lender. There is no requirement of "corrupt intent" in usury cases under D.C. law, as Virginia "no doubt" knew. It is passing strange that this cause should be decided on "corrupt intent."

The D.C. laws on the limitations of actions were also held inapplicable by the Virginia court. This was contrary, of course, to both the chosen law of the parties as stated on the face of the note and contrary to the requirements of the full-faith-and-credit clause, in violation of the Constitution.

CONCLUSION

In Virginia the denial of a petition for writ of certiorari to the Supreme Court of Virginia, unlike a denial of a petition for certiorari to this Court, has the legal effect of affirming the judgment of the trial court. Consequently, the Virginia Supreme Court has decided:

(1) The personal residence of a general partner may, in of itself, provide the requisite constitutionally "minimal contact" to enable Virginia to exercise personal jurisdiction over a D.C. non-resident partnership not having even any "minimal contacts" in Virginia;

(2) That in furtherance of (1) above, the D.C. non-resident partnership may be brought into the Virginia court by taping process to the front door of the personal (non-business) residence of a general partner;

(3) That a choice-of-law provision in the agreed contract of the parties, which is unqualified in its terms, may be judicially modified by a Virginia court to include only "substantive law" of the District of Columbia;

(4) That a Virginia trial court may refuse to follow District of Columbia law admittedly applicable under the settled rules of conflict of laws on the ground that District of Columbia law is "borrower oriented"; and

(5) It is not necessary for a Virginia court to have found any "governmental interests" on the part of Virginia in order to refuse the applicable D.C. law.

It is an understatement to say such holdings as the above have a broad impact on commercial transactions in the United States. Such rulings are particularly crucial for commercial transactions when a court refuses to differentiate between the business contacts of the commercial entity in the state and the personal contacts arising from the home residence of one of the principals of the commercial entity. Commercial transactions are predicated upon the premise that, at their inception, the parties to the contract should be able to evaluate intelligently their rights, duties, liabilities and risks so that they may make an informed judgment as to whether to embark on a transaction. The decision of the Virginia Supreme Court in this cause destroys that essential stability and substitutes therefor each individual trial judge's subjective evaluation of whether, in the absence of any business contacts in the state, he can find some basis on which to exercise impersonam jurisdiction over a non-resident business entity.

The record of the constitutional transgressions of Virginia, contrary to this Court's decisions in *International Shoe*, *Shaffer* and *Alaska Packers*, cries for the corrective intervention

of this Court in this cause in the name of the Constitution itself.

For the foregoing reasons, it is respectfully submitted that a writ of certiorari issue to the Supreme Court of Virginia.

Respectfully submitted,

FRANK E. BROWN, Jr.
Barham, Radigan, Suiters, & Brown
2009 North Fourteenth Street
Arlington, Va. 22216

CLIFFORD J. HYNNING
Attorney for Petitioners
and also appearing pro se,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: 232-0775

APPENDIX A

DISTRICT OF COLUMBIA CODE

§28:1-105. Territorial application of this subtitle; parties' power to choose applicable law

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to the District and also to a state or nation the parties may agree that the law either of the District or of such state or nation shall govern their rights and duties. Failing such agreement this sub subtitle applies to transactions bearing an appropriate relation to the District.

* * *

§28-3301. Rate of interest expressed in contract

The parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8 percent per annum. Aug. 30, 1964, Pub.L. 88-509, §1, 78 Stat. 675, eff. Jan. 1, 1965.

* * *

§28-3303. Usury defined

If a person or corporation contracts in the District,

(1) verbally, to pay a greater rate of interest than 6 percent per annum, or

(2) in writing, to pay a greater rate than 8 percent per annum, the creditor shall forfeit the whole of the interest so contracted to be received.

This section does not affect sections 26-601 to 26-611. Aug. 30, 1964, Pub.L. 88-509, §1, 78 Stat. 675, eff. Jan. 1, 1965.

ANNOTATION TO §28-3303

Various devices have been used to cloak usurious transactions.[73] Whatever the form of the contract, the court will look into all the circumstances of the case in determining whether or not the transaction is a mere disguise or contrivance for the purpose of securing usurious interest.[74] If the facts show it to be a contract to secure illegal interest, it will be so construed.[75]

Money exacted by the lender from the borrower for the use of money in excess of the legal rate allowed is usury,[76] under whatever name or pretense the exaction, extension, or forbearance may be designated.[77] Accordingly, this section may be violated by deducting a bonus or commission in advance,[78] as well as by any other means by which mo money in excess of the legal rate is exacted.[79] However, it is the general rule that a commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury, unless the broker is acting as the agent of the lender.[79a]

* * *

§12-301. Limitation of time for bringing actions

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

. . .

(7) on a simple contract, express or implied—3 years;

(8) for which a limitation is not otherwise specially prescribed—3 years.

* * *

§28:3-122. Accrual of cause of action

(1) A cause of action against a maker or an acceptor accrues . . .

(b) in the case of a demand instrument upon its date or or, if no date is stated, on the date of issue . . .

* * *

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA HELD AT SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON TUESDAY THE 25TH DAY OF OCTOBER, 1977.

The petition of The Caravel Office Building Company, a District of Columbia partnership, and Clifford J. Hynning for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Arlington County on the 14th day of January, 1977, in a certain proceeding then therein depending, wherein Bogley, Harting, Mahoney & Lebling, Inc., was plaintiff and the petitioners and another were defendants, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgment complained of, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

Record No. 770632

A Copy,

Teste:

Howard G. Turner, Clerk

By: /s/ Richard R. [Illegible]
Deputy Clerk

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC., A Maryland Corporation, Complainant	)	
v.	)	IN CHANCERY NO. 26191
THE CARAVEL OFFICE BUILDING COMPANY, A District of Columbia Partnership	)	AT LAW NO. 18633
and	)	
CLIFFORD J. HYNNING and CAROL H. SMITH, Defendants	)	

JUDGMENT ORDER

THIS MATTER CAME ON TO BE HEARD *ore tenus* upon the pleadings formerly filed herein; upon the witnesses presented, the evidence adduced by the parties hereto and the authorities cited by counsel on October 13, 1976; upon the Memoranda of Law filed by counsel for the respective parties and the argument of said counsel on November 3, 1976; upon the letter opinion of the Court dated December 23, 1976, and upon consideration of all of the foregoing;

IT APPEARING TO THE COURT that the Complainant is entitled to judgment as sued for in the Motion for Judgment; it is therefore

ADJUDGED and ORDERED that the Complainant, BOGLEY, HARTING, MAHONEY & LEBLING, INC., be, and

it hereby is, awarded a judgment against the Defendants, THE CARAVEL OFFICE BUILDING COMPANY, a District of Columbia partnership, and CLIFFORD J. HYNNING, in the principal amount of SEVENTY-NINE THOUSAND SEVENTY-SIX AND 48/100 DOLLARS, ($79,076.48), with interest at the rate of eight per cent (8%) per annum from the 14th day of July, 1972 and Court costs.

AND since the Defendants, THE CARAVEL OFFICE BUILDING COMPANY, a District of Columbia partnership and CLIFFORD J. HYNNING, have indicated their intention to apply to the Supreme Court of Virginia for a Writ of Error and Supersedeas to the judgment of this Court; and upon the Defendants or someone for them giving or filing a bond with approved corporate surety in this Court within twenty-one (21) days from this date in the penalty of TEN THOUSAND AND 00/100 DOLLARS, ($10,000.00). Said bond is conditioned according to law; it is further

ORDERED that the execution of the judgment hereinabove rendered be, and the same hereby is, suspended for a period of four months from this date; and, if the Defendants duly file a Petition for a Writ of Error in the Supreme Court of Virginia, execution on the judgment is suspended until the Supreme Court of Virginia has acted upon said Petition; and if a Writ of Error is granted in this case it is ORDERED that execution on the judgment be suspended until an opinion has been rendered by said Supreme Court of Virginia;

IT IS further ORDERED that the Clerk of the Court forward forthwith a certified copy of this Order to all counsel and the Clerk of the Court is further ORDERED to record this judgment on the judgment lien docket in the Clerk's office in Arlington County.

ENTERED this 14th day of January, 1977.

/s/ William L. Winston
Judge

I ASK FOR THIS:

GARNETT & KOSTIK

By: /s/ Griffin T. Garnett, III
Griffin T. Garnett, III
Counsel for Complainant

SEEN, OBJECTED TO and EXCEPTION NOTED:

/s/ Peter J. Stackhouse
Peter J. Stackhouse
Counsel for Defendants

A copy
Teste: David A. Bell, Clerk

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC., *Complainant*	*	
v.	*	IN CHANCERY NO. 26191
THE CARAVEL OFFICE BUILDING COMPANY, et al, *Defendants*	*	AT LAW NO. 18633

ORDER

THIS MATTER CAME ON TO BE HEARD upon the Defendants' plea to the Statute of Limitations; upon the evidence adduced, the authorities cited and the argument of counsel; and

IT APPEARING TO THE COURT that in matters of remedies and procedure in this cause the law of the Commonwealth of Virginia should govern; and

IT FURTHER APPEARING TO THE COURT that the Defendants' plea to the Statute of Limitations should be overruled;

IT IS therefore ADJUDGED and ORDERED that the Defendants' plea to the Statute of Limitations be, and hereby is, overruled and this cause is continued to the 13th day of October, 1976 for trial.

ENTERED this 18th day of October, 1976.

/s/ CHARLES S. RUSSELL
JUDGE

I ASK FOR THIS:

/s/ Griffin T. Garnett, III
Griffin T. Garnett, III
Counsel for Plaintiff

SEEN, OBJECTED TO and EXCEPTION NOTED:

/s/ PETER J. STACKHOUSE
Clifford J. Hynning
Counsel for Defendant and
appearing *pro se*

* * *

CIRCUIT COURT OF ARLINGTON COUNTY
VIRGINIA

December 23, 1976

Griffin T. Garnett, III, Esquire
Garnett & Kostik
2000 N. 16th Street
Arlington, Virginia 22216

Peter K. Stackhouse, Esquire
Tolbert, Smith, FitzGerald
and Ramsey
2300 South Ninth Street
Arlington, Virginia 22204

Re: At Law No. 18633, In Chancert No. 26191
Bogley, Harting, Mahoney & Liebling, Inc. v.
The Caravel Office Building Co., et al.

Gentlemen:

This is an action on a promissory note where the defense is usury.

There are two preliminary questions for decision prior to reaching the principal question. The first question is whether the law of the District of Columbia or the law of this jurisdiction should apply. The note itself states that it is to be governed by the laws of the District of Columbia and recites as its reasons that it was delivered there by a partnership organized and existing under the laws of that jurisdiction and that it is secured by real property located in the District of Columbia. Under these circumstances the relationship which the transaction bears to the District of Columbia is a reasonable one and the contracting parties may agree upon the applicable law. Sec. 8.1-105, *Code of Virginia.*

The second preliminary question is whether parole evidence is admissible where the document upon which the action is based is claimed to be usurious. As is the case where illegality or fraud is claimed, the evidence is admissible. *Houghton v. Burden,* 228 U.S. 161 (1913), *Richeson v. Wood,* 158 Va. 269 (1932).

The plaintiff, engaged in the mortgage brokerage business, entered into dealings with the defendants Caravel Office Building Company (a partnership) and Clifford J. Hynning. In connection with that the plaintiff (Bogley) earned a finder's fee for obtaining the Sun Life permanent loan, a fee for obtaining the construction loan with National Savings & Trust, a brokerage commission for arranging a sale-leaseback agreement, and a fee in connection with a gap loan. This last-mentioned loan was required by the construction lender and the contractor because of what they considered to be a shortage of dollars in the project. In that connection Bogley issued a standby commitment (Plaintiff's Exhibit No. 9) and received pursuant thereto a fee of $9,000.00. It is the receipt of this sum which the defendants say makes the note in suit (Plaintiff's Exhibit No. 1) usurious. That note bore the legal rate of interest, eight percent.

Under the law of the District of Columbia, a front-end payment made to the lender or to his agent is considered to be interest. *Searl v. Earll,* 221 F.2d 24 (D.C. Cir. 1954). The payment of a bonus to the lender had earlier been held to be interest. *Bowen v. Mt. Vernon Savings Bank,* 105 F.2d 796) (D.C. Cir. 1939). The District of Columbia's usury statute is considered to be broad, expansive and borrower oriented. *Hill v. Hawes,* 144 F.2d 511 (D.C. Cir. 1944). Cases in the District of Columbia have expressed no doubt that "a commission or bonus paid to the same person who is entitled to interest is to be considered as

additional interest." *Industrial Bank of Washington v. Page,* 249 F.2d 938 (D.C. Cir. 1957).

From these decisions it would appear that in the absence of anything else the payment of the commission to the lender makes the transaction usurious. If that is the case the law of the District of Columbia would apply the fee or commission to principal and would also allocate all payments on the note to the curtail of principal and deny interest.

To determine whether a transaction is usurious or not, resort may be had to the intention of the parties. It was for this reason that the parole evidence was admitted in the case. The testimony of the executive vice president of Bogley, Joseph J. Mahoney, Jr., was that the $9,000.00 fee was a part of a total financing package which included the permanent financing, the construction loan, the sale-leaseback and the commitment for the gap loan. He testified that it was not a loan fee but a commitment fee under which Bogley might either place the loan or fund it. Further he testified that although Bogley turned out to be the lender, it was not known at the time that that would be the case. Testimony revealed that efforts were made by Bogley to place the gap loan with various lenders as well as with a substantial material supplier before it became necessary for Bogley to fund it. The necessity for the gap loan resulted from the substantial holdbacks experienced under the construction loan.

A defendant, Clifford J. Hynning testified concerning a conversation had with Cross, a representative of Bogley concerning the standby commitment. He said there was no discussion of third party financing, that Bogley was to make the gap loan, and that they discussed an effective yield of twelve percent to Bogley for the loan. He further said

that during the conference with Cross there were conferences with Mahoney in an adjacent office about the yield. Mahoney denied any discussion regarding a twelve percent yield on the gap loan.

It should be noted that the date of the standby commitment was January 22, 1969. The note was dated February 28, 1969, but was not funded until late 1970 and 1971. Clearly under the commitment Bogley could make the loan, but the commitment did not require that they make it. The $9,000.00 fee paid under commitment was in no sense contingent. It was payable when the commitment was accepted regardless of who made the loan.

It is a general principle that where a contract is fairly open to two constructions, by one of which it would be lawful and the other unlawful, the former will be adopted. *17 Am.Jur.2d, Contracts,* §254; see also *17A CJS, Contracts,* §318; *Great Northern Ry Co. v. Delmar Co.* 51 S.Ct. 579 (1931); *Ottenberg v. Ottenberg,* 194 Fed. Supp. 98 (D.C. 1961).

If two reasonable constructions are possible by one of which the contract will be legal and valid, while by the other it will be usurious and unlawful, the court will always adopt the former. *91 CJS, Usury,* §11; *In re Zemansky,* 39 Fed. Supp. (D.C. Calif. 1941); *In re Richards,* 272 Fed. Supp. (D.C. Maine 1967); *Commercial Discount Company v. Rutledge,* 297 F.2d 370 (10th Cir. 1961).

Usury will only be presumed when the transaction is usurious on its face. If the contract appears fair on its face then it is presumed to be in good faith. The party attacking it has the burden of proving usury by extraneous evidence showing the corrupt intent to conceal it under an ostensibly lawful contract or transaction. *91 CJS, Usury,* §114.

The evidence in this case is insufficient to lead the court to conclude that this transaction which was readily susceptible to a valid and legal construction, was in fact usurious. It was treated by all the parties to it as valid and legal for many years. It was only in the late pleading stage of this case that the defense of usury was raised.

Counsel for the plaintiff should prepare the order awarding judgment to the plaintiff for the principal, interest and costs. No reference is made in the note to attorney's fees, although they are referred to in the deed of trust. Although a literal interpretation of the language in the deed of trust might permit the assessment of fees, the omission of them from the note is conclusive and they are denied. When the order has been endorsed, present it for entry.

Very truly yours,

/s/ William L. Winston
William L. Winston
Judge

WLW:kw

* * *

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

[Caption omitted in printing]

ORDER

THIS MATTER CAME ON TO BE HEARD upon the Defendant's, THE CARAVEL OFFICE BUILDING COMPANY, Motion to Quash and upon the Defendants', THE CARAVEL OFFICE BUILDING COMPANY and CLIFFORD J. HYNNING, Plea in Abatement or in the Alternative a Motion to Dismiss, and was argued by counsel; and,

IT APPEARING TO THE COURT that said Motions should be denied, it is, therefore ORDERED that the Motion to Quash of the Defendant, THE CARAVEL OFFICE BUILDING COMPANY, and the Plea in Abatement or in the Alternative a Motion to Dismiss of the Defendants, THE CARAVEL OFFICE BUILDING COMPANY and CLIFFORD J. HYNNING, be, and the same hereby are, denied; and,

IT IS FURTHER ORDERED that this matter be transferred to the law side of this Court; and,

THIS MATTER FURTHER CAME ON TO BE HEARD upon the Defendants First Defense in their Answer, which is hereby treated as a Demurrer; and,

IT APPEARING TO THE COURT that said First Defense should be overruled, it is, therefore, ORDERED that the First Defense of the Answer of the Defendants, THE CARAVEL OFFICE BUILDING COMPANY and CLIFFORD J. HYNNING, be, and it hereby is, overruled.

AND THIS CAUSE IS CONTINUED.

ENTERED this 14th day of April, 1976.

/s/ CHARLES S. RUSSELL
JUDGE

I ASK FOR THIS:

GARNETT & KOSTIK

By: /s/ Griffin T. Garnett III
Griffin T. Garnett, III
Counsel for Complainant

SEEN, OBJECTED TO AND EXCEPTION NOTED:

By: /s/ CLIFFORD J. HYNNING
Clifford J. Hynning, pro se and
as Managing General Partner of
THE CARAVEL OFFICE BUILDING COMPANY

* * *

EXHIBIT A

PROMISSORY NOTE

$100,000.00 Washington, D. C.
February 28, 1969

On December 31, 1970 the undersigned promises to pay to the order of BOGLEY, HARTING, MAHONEY & LEBLING, INC. ONE HUNDRED THOUSAND DOLLARS ($100,000.00) or so much thereof as may from time to time be advanced for value received at 7000 Wisconsin Avenue, Chevy Chase, Maryland, with interest from date of each advance at eight per centum per annum, until paid, payable monthly and at maturity; each installment of interest to bear interest after maturity, if not then paid, at the rate aforesaid. Said payments due on the first of each and every month.

AND it is expressly agreed that if default be made in the payment of any one of the aforesaid installments when and as the same shall become due and payable, then and in that event the unpaid balance of the aforesaid principal sum shall at the option of the holder hereof, at once become and be due and payable, anything hereinabove contained to the contrary notwithstanding.

This Promissory Note has been delivered in the District of Columbia by a limited partnership organized and doing business in the District of Columbia, is secured by real property located in the District of Columbia, and is to be governed by the laws of the District of Columbia.

THE CARAVEL OFFICE BUILDING COMPANY

Signed for Identification BY: /s/ Carol H. Smith
General Partner

_____ /s/ _____
Trustee

TO: JOSEPH J. MAHONEY, JR. and CARVILLE J. CROSS
CONVEYING: Leasehold interest and estate in and to Lots 60, 61 and 62 in G.N. Hopkins and others [illegible] of Lots in Square 111

COMMONWEALTH OF VIRGINIA

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

BOGLEY, HARTING, MAHONEY & LEBLING, INC.,
a Maryland Corporation,
Complainant

versus SUBPOENA IN CHANCERY
No. 26191

THE CARAVEL OFFICE BUILDING COMPANY,
a District of Columbia partnership

and

CLIFFORD J. HYNNING, et al
3700 North Military Road
Arlington, Va.

Serve: Clifford J. Hynning, General Partner
3700 North Military Road
Arlington, Va.,
Defendants

The party upon whom this writ and the attached paper are served is hereby notified that unless within twenty-one (21) days after such service, response is made by filing in the Clerk's Office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter a decree against such party, without further notice, either by default or after hearing evidence.

Appearance in person is not required by this subpoena.

Done in the name of the Commonwealth of Virginia, this 18 day of February, 1976.

JOSEPH C. GWALTNEY, CLERK

By: /s/ Katherine K. Oakwell,
DEPUTY CLERK

GARNETT & KOSTIK, p. q.
2000 N. 16th St.
Arlington, VA

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & & LEBLING, INC., A Maryland Corporation, 7000 Wisconsin Avenue, Chevy Chase, Maryland,
Complainant,

v.

THE CARAVEL OFFICE BUILDING COMPANY, A District of Columbia partnership, 1555 Connecticut Avenue, N.W. Washington, D.C. 20036

and

CLIFFORD J. HYNNING, 3700 North Military Road, Arlington, Virginia

and

CAROL H. SMITH, 1034 North Calvert Street, Baltimore, Maryland.
Defendants.

In Chancery No. 26191

MOTION TO QUASH SERVICE ON CARAVEL OFFICE BUILDING COMPANY, A DISTRICT OF COLUMBIA PARTNERSHIP

Comes now the defendant Caravel Office Building Company (hereinafter called "Caravel"), a limited partnership organized under the laws of the District of Columbia, by Clifford J. Hynning, managing general partner of said limited partnership, appearing pro se, and moves this Court to quash the return of service of summons on Caravel on the grounds that the defendant Caravel is a limited partnership

under the laws of the District of Columbia; defendant Caravel is not licensed to do business in Virginia and has engaged in no business there; and defendant Caravel, an indispensable party (on the face of the complaint and its exhibits), has not been properly served with process in this action, all of which more clearly appears from the affidavit of Clifford J. Hynning (hereinafter called "Hynning"), managing general partner of Caravel, as filed in the United States District Court for the Eastern District of Virginia in Civil Action No. 75-855-A, a copy of which is annexed hereto as defendant's Exhibit I.

CLIFFORD J. HYNNING, pro se, as
Managing General Partner of
CARAVEL OFFICE BUILDING COMPANY, A District of Columbia limited partnership,
Suite 301,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone No: 232-0775

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 1976, a copy of the above Motion to Quash, and the attached Defendants' Plea in Abatement and Answer was hand-delivered, to Griffin T. Garnett, III, Esq., Garnett and Kostik, 2000 North 16th Street, Arlington, Va. 22216

Clifford J. Hynning

* * *

DEFENDANT'S EXHIBIT: AFFIDAVIT

CLIFFORD J. HYNNING, being duly sworn, deposes and says:

1. I am a member of the bar of the District of Columbia, with law offices at 1555 Connecticutt Ave., NW, Washington, D. C.,; and I am also the managing general partner of Caravel Office Building Company (hereinafter called "Caravel").

2. Caravel is a limited partnership organized under the laws of the District of Columbia, with its business offices at 1555 Connecticut Ave., NW., Washington, D. C. Caravel's sole business consists of the ownership and management of an office building located at 1601 Connecticut Ave., NW, Washington, D. C. Caravel is not licensed to do any business except in the District of Columbia; nor does Caravel engage in business anywhere except in the District of Columbia.

3. All the records of Caravel are maintained and physically located at the partnership offices at 1601 Connecticut Ave., NW, Washington, D. C.

4. The parties to the transaction giving rise to this claim made an explicit choice-of-law provision (Plaintiff's Exhibit "A") as follows:

> "This Promissory Note has been delivered in the District of Columbia by a limited partnership organized and doing business in the District of Columbia, is secured by real property located in the District of Columbia, and is governed by the laws of the District of Columbia."

5. As appears from the above, this claim will be determined by the statutes and court decisions of the District

of Columbia. The United States District Court for the Eastern District of Virginia is not accustomed to trying cases exclusively governed by the laws of the District of Columbia, as are the federal courts sitting in the District of Columbia.

6. There will be no substantial harm or hardship to plaintiff in relegating it to its remedy before the United. States District Court for the District of Columbia, the district where all of the acts and transactions complained of took place. The granting of the motion to transfer venue will in no way deprive plaintiff of its day in court.

/s/ Clifford J. Hynning
Clifford J. Hynning

Dist of Columbia.
Subscribed and sworn to before me this 27th day of December, 1975

/s/ Herman Jacobs
Notary Public
Comm. Exp. 12/14/80

* * *

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC.,
A Maryland Corporation
7000 Wisconsin Avenue,
Chevy Chase, Maryland,
Complainant,

v.

THE CARAVEL OFFICE BUILDING COMPANY,
A District of Columbia partnership,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036

and

CLIFFORD J. HYNNING,
3700 N. Military Road,
Arlington, Virginia

and

CAROL H. SMITH,
1034 N. Calvert Street,
Baltimore, Maryland
Defendants.

In Chancery No. 26191

PLEA IN ABATEMENT,
or in the Alternative, a Motion to Dismiss

Comes now Clifford J. Hynning, appearing pro se, individually, and as managing general partner of Caravel Office Building Company (hereinafter called "Caravel"), and moves this Court to abate or dismiss the action on the ground that, as appears on the face of the complaint and its supporting Exhibits A and B, it is grounded on a purely local action involving real property located within the District

of Columbia and, by agreement of plaintiff and defendants, is governed exclusively by the laws of the District of Columbia.

As grounds for this motion, defendants submit the following:

(a) The action is based on a note (complaint and plaintiff's exhibit A), which recited on its face the following choice-of-law provision:

> "This Promissory Note has been delivered in the District of Columbia by a limited partnership organized and doing business in the District of Columbia, is secured by real property located in the District of Columbia, and is governed by the laws of the District of Columbia."

and plaintiff's claim did not arise out of, or have any connection with, any business transaction by any defendant in this state and district.

(b) Defendant Caravel is a limited partnership organized under the laws of the District of Columbia; and Caravel's exclusive business consists of the ownership of the Caravel Office Building, title to which is held in the name of the partnership in accord with the specific provision of a District of Columbia statute authorizing a partnership to own real property in the partnership name, and, further, of the management and leasing of said building, and performs no other functions or activities, as more clearly appears from defendants' exhibit 1; and this action could have readily been brought by plaintiff in the United States District Court for the District of Columbia.

(c) All the witnesses and records are readily available in the District of Columbia; and, moreover, defendant Hyn-

ning as a member of the bar of the District of Columbia for several decades, can readily defend this action on behalf of all defendants without being put to the expense of employing counsel resident in Virginia and who are members of the bar of this Court.

(d) Upon the trial of this action it will be necessary to interpret the statutes and court decisions of the District of Columbia.

(e) By denominating its action "In Chancery" plaintiff is clearly relying on the deed of trust annexed to its complaint as plaintiff's exhibit B. By so doing, plaintiff, by definition, has filed a local action involving real property located outside the jurisdiction of this Court. The clear effect of the above, together with the choice of law provision contained on the face of the note, and set forth in para. (a) above, whereby the parties explicitly agreed that this transaction is to be exclusively governed by the laws of the District of Columbia, it follows that the adjudication herein should best be performed by the courts of the District of Columbia. In this connection, it should be noted that the plaintiff has already sought to invoke the diversity jurisdiction of the Eastern District of Virginia in Civil Action Number 75-855-A, dismissed in an order on February 13, 1976, by Judge Bryan.

The Plaintiff has available to it the proper forum of the United States District Court for the District of Columbia, where all the named defendants agree to accept service, at the law offices of Clifford J. Hynning, Suite 301, 1555 Connecticut Avenue, N.W., Washington, D.C. 20036, and have the matter fully adjudicated by such court, applying the law of the District of Columbia, which is the law generally applied by the court to the transactions set forth in the complaint. There would consequently be no substantial

harm or hardship to the plaintiff in relegating it to its remedy before the United States District Court for the District of Columbia, and the district wherein all the acts and transactions complained of took place. The granting of this plea in abatement will in no way deprive the plaintiff of its day in court.

Respectfully submitted

CLIFFORD J. HYNNING pro se, and as counsel for defendants,
Suite 301,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone No. 232-0775

* * *

HARTING, MAHONEY & LEBLING, INC.
Mortgage Bankers
Chevy Chase, Maryland 20015

Defendants Exhibit B6 for Identification
Exhibit D

MEMORANDUM February 12, 1969

To: Harry F. Davies, Jr.
From: Carville J. Cross
Re: Caravel Office Building Loan
Loan Fees Incurred

Set forth below is a breakdown of the loan fees incurred in conjunction with the financing of the Caravel Office Building, 1601 Connecticut Avenue, N.W., Washington, D.C.

Permanent Loan - Sun Life - $922,000 1% fee	$ 9,220.00
Construction Loan - National Savings & Trust - 1% fee	9,220.00
Sale-leaseback - $585,000 2% fee	11,700.00
9	*9,000.00* *HD*
Gap Loan - $100,000-7% fee	7,000.00
TOTAL FEES	$37,140.00
	39,140.00

/s/ Illegible

100M 8% monthly term until 12/31/70.

$100,000 @ 8%, [illegible]12/31/70

EXHIBIT B

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Case No. 77-1044

CARAVEL OFFICE BUILDING COMPANY,
A District of Columbia limited partnership, and
CLIFFORD J. HYNNING,
Managing General Partner of said limited partnership,
Petitioners,

v.

BOGLEY HARTING MAHONEY &
LEBLING, INC., A Maryland corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GRIFFIN T. GARNETT, III
Garnett, Kostik & Garnett
2000 North 16th Street
Arlington, Virginia 22216
Attorney for Respondent

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

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CASES

OTHER MATERIALS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Case No. 77-1044

CARAVEL OFFICE BUILDING COMPANY,
A District of Columbia limited partnership, and
CLIFFORD J. HYNNING,
Managing General Partner of said limited partnership,
Petitioners,

v.

BOGLEY HARTING MAHONEY &
LEBLING, INC., A Maryland corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Bogley, Harting, Mahoney & Lebling, Inc., hereinafter called Respondent, files its Brief in Opposition to the Petition for Writ of Certiorari heretofore filed by Caravel Office Building Company and Clifford J. Hynning, hereinafter called Petitioners. The Petitioners were defendants in the trial Court and the Respondent was plaintiff in the trial Court.

References to matters contained in the Petitioners' Appendix A will be referred to as Petitioners have done in their Petition. References to Respondent's Appendix attached hereto (Appendix B) will be referred to as pp. b.

OPINIONS BELOW

Your Respondent agrees that the official and unofficial reports of the opinions, orders and judgments delivered in the courts below are correctly set out in Petitioners' Appendix A, although not in chronological order.

JURISDICTION

The Petition cites the statutory provision of jurisdiction as 28 USC 1257(3), but does not contain a specifically identifiable, concise statement of the grounds on which the jurisdiction of this Court is invoked. Counsel for Respondent will not speculate as to the grounds upon which the Petitioners attempt to invoke the jurisdiction of this Court.

Your respondent objects to Petitioners' attempt to invoke the jurisdiction of this Court in this matter on the following basis:

1. As will be further argued in this Brief, this cause involves a State trial Court holding a contract valid, based upon the general law of the land applicable to the facts, as established by the evidence. This being the case, Respondent respectfully submits that this Court cannot review the decision of the trial Court in Virginia and the decision of the Supreme Court of Virginia. *Delmas v. Insurance Company,* 14 Wall. 661; *Chicago and Alton Railway v. Wiggins Ferry Company,* 119 U.S. 615 (1887).

2. Your Respondent submits that a Writ of Certiorari should be granted only when there are special and important reasons and that a prime consideration in this matter is whether, in this case the Circuit Court of Arlington County, Virginia and the Supreme Court of Virginia, have decided a Federal question of substance not theretofore

determined by this Court or have decided it in a way probably not in accord with the applicable decisions of this Court. Rule 19, *Rules of the Supreme Court of the United States,* 1970. Your Respondent will show in later argument that this case does not involve a Federal question of substance and that the decisions below were in accord with pertinent decisions of this Court.

Furthermore, as shown in the Petitioners' Appendix and in the attached Petitioners' Notice of Appeal and Assignment of Error, Supplemental Assignment of Error and Index to their Petition for Appeal in the Supreme Court of Virginia (pp. 4b, 7b & 8b), the Petitioners never presented to the Circuit Court of Arlington County, Virginia or the Supreme Court of Virginia, any Federal question of substance. At no time in the foregoing documents did the Petitioners contend that any of the applicable State statutes were unconstitutional. Having failed to raise these issues in the trial Court and highest State Court, the Petitioners should not be given the opportunity to raise them for the first time in this Court.

QUESTIONS PRESENTED

There are no substantial questions involved in the case.

CONSTITUTIONAL PROVISIONS AND STATE STATUTES INVOLVED

Your Respondent would add the following Virginia State statutes to the Constitutional provisions referred to in the Petition for Writ of Certiorari:

1. §8–13, Code of Virginia, 1950, as amended. (p. 1b)

2. §8-25, Code of Virginia, 1950, as amended, provides:

> If any person against whom a right of action shall have accrued on an award, or any contract, other than a judgment or recognizance, shall, by writing signed by him or his agent, promise payment of money on such award or contract, the person to whom the right shall have so accrued may maintain an action for the money so promised, within such number of years after such promise as it might be maintained under §8-13, if such promise were the original cause of action. An acknowledgment in writing, from which a promise of payment may be implied, shall be deemed to be such promise in the meaning of this section.

3. §8-38, Code of Virginia, 1950, as amended, provides:

> Any action at law or suit in equity, except where it is otherwise especially provided, may be brought in any county or corporation: (1) Wherein any of the defendants may reside.

4. §8-51, Code of Virginia, 1950, as amended, provides:

> A notice, no particular mode of serving which is prescribed, may be served by delivering a copy thereof in writing to the party in person; or, if he or she be not found at his or her usual place of abode, by delivering such copy and giving information of its purport to any person found there, who is a member of his or her family, other than a temporary sojourner, or guest, and above the age of sixteen years; or if he or she, or any such person be not found there, by leaving such copy posted at the front door of such place of abode.

5. §8-59.1, Code of Virginia, 1950, as amended, provides:

> Process against, or notice to, a copartner or partnership, may be served upon a partner, and it shall be deemed service upon the partnership and upon each partner individually named in the action, provided the person served is not a plaintiff in the suit, and provided the matter in suit is a partnership matter.

STATEMENT OF THE CASE

Your Respondent agrees with Petitioners' Statement of the Case found on pages 3 and 4 of the Petition for Writ of Certiorari and with the contention that a non-jury trial was held October 13, 1976, before the Honorable William L. Winston, Judge of the Circuit Court of Arlington County, Virginia.

Your Respondent is dissatisfied with the rest of the Statement of the Case in the Petition and contends that the facts of the transaction between the parties are more accurately set out in the letter opinion of the Circuit Court of Arlington County, Virginia of December 23, 1976 found in the Petitioners' Appendix at pages 10a through 14a.

As previously contended by your Respondent in the jurisdictional section, the Petitioners have not raised any Federal questions sought to be reviewed prior to the filing of their Petition, thus the Virginia Courts did not pass upon these questions. Thus, your Respondent contends that the Federal questions were not timely and properly raised and this Court does not have jurisdiction to review this judgment. 23-1(f), *Rules of the Supreme Court of the United States* (1970).

ARGUMENT

For purposes of this argument, Respondent has categorized the issues that Petitioners have attempted to rasie as follows:

1. Was the due process clause of the Fourteenth Amendment of the Constitution of the United States violated?

(a) Was there valid personal service upon the Petitioner Clifford J. Hynning?

(b) If there was valid personal service on the Petitioner Hynning, did this confer upon the Circuit Court of Arlington County, Virginia personal jurisdiction over the Petitioners Hynning and Caravel Office Building Company?

2. Was the full faith and credit clause of the Constitution of the United States violated?

(a) Did the forum err in applying its procedural laws?

(b) Did the forum follow the substantive laws of the District of Columbia in awarding judgment to the Respondent?

1. Was the due process law of the Fourteenth Amendment of the Constitution of the United States violated?

(a) Was there valid personal service upon the Petitioner Clifford J. Hynning?

Throughout these proceedings Petitioner Hynning has admitted to being a long-time resident of Arlington County, Virginia residing at 3700 North Military Road. Title 8-38(1), Code of Virginia, 1950, as amended, provides clearly that the Circuit Court of Arlington County, Virginia was the proper forum in Virginia to proceed against the Petitioner Hynning and nowhere throughout this case did Petitioners contend that there was improper venue or a better

forum within the Commonwealth of Virginia. As pointed out in the Petition, service was effected upon the Petitioner Hynning by posting two copies of the Complaint on the front door of his usual place of abode. Section 8-51, Code of Virginia, 1950, as amended, provides:

> A notice, no particular mode of serving which is prescribed, may be served by delivering a copy thereof in writing to the party in person; or, if he or she be not found at his or her usual place of abode, by delivering such copy and giving information of its purport to any person found there, who is a member of his or her family, other than a temporary sojourner, or guest, and above the age of sixteen years; or if he or she, or any such person be not found there, *by leaving such copy posted at the front door of such place of abode.* (Emphasis supplied)

This method of service is widely used throughout the United States and in fact, has been approved in this Court in the case of *Milliken v. Meyer,* 312 U.S. 712, 61 S.Ct. 548, 85 L.Ed. 278, in which the Court held that:

> Domicile in the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service. Substituted service in such cases has been quite uniformly upheld where the absent defendant was served at his usual place of abode in the state. Page 462.

See also 62 Am.Jur.2d Process, §69; 126 A.L.R. 1474.

Petitioners referred to Federal Rules of Civil Procedure, Rule 4(d)(3), as not providing for the type of service effect-

ed in our present case. The Petitioners failed to cite to this Court, Rule 4(d)(7) of the Federal Rules of Civil Procedure, which provide as follows:

> Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the district court is held for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

Obviously, in our present case the service upon Mr. Hynning substantially conformed to the Virginia statute and the Virginia court acquired personal jurisdiction over Mr. Hynning.

(b) If there was valid personal service on the Petitioner Hynning, did this confer upon the Circuit Court of Arlington County, Virginia personal jurisdiction over the Petitioners Hynning and Caravel Office Building Company?

A partnership has been defined in the Uniform Partnership Act as "an association of two or more persons to carry on as co-owners, a business for profit." §50–6, Code of Virginia, 1950, as amended.

Even after the adoption of the Uniform Partnership Act, the jurisdictions are divided as to whether a partnership is a legal entity distinct from the persons comprising it. 60 Am.Jur.2d Partnerships §322, 323. In Virginia it is held that a common law partnership was not a separate entity and thus could not sue or be sued in its firm name. The

Virginia Court has further held that the Uniform Partnership Act does not require the naming of the partnership as a defendant in a suit against the partners. *McCormick v. Romans,* 214 Va. 144, 198 S.E.2d 651 (1973). Indeed, the United States Supreme Court, in the case of *Great Southern Fire Proof Hotel Company v. Jones,* 177 U.S. 499, 20 S.Ct. 690 (1900), held that with regard to jurisdiction of the United States Court based on the diversity of citizenship of the parties, the Court must look to the citizenship of the persons composing a partnership association, even though such association may have some of the characteristics of a corporation.

In an effort to overcome the nebulous character of partnerships, many jurisdictions, including Virginia, have enacted statutes that provide that in actions against members of partnerships, service of process upon one of the partners is service on all and that service of process on one of the partners gives the Court jurisdiction over the partnership. 60 Am.Jur.2d Partnerships, §330.

The Code of Virginia, 1950, as amended, §8–59.1, provides as follows:

> Process against, or notice to, a copartner or partnership may be served upon a partner and it shall be deemed service upon the partnership and upon each partner individually named in the action, provided the person served is not a plaintiff in the suit, and provided the matter in suit is a partnership matter.

Petitioner Hynning has conceded that he was a general partner in the partnership and thus, under the Virginia statute, service upon him sufficed to give Virginia personal jurisdiction over both Petitioner Hynning and the partnership,

the Caravel Office Building Company.

In the Petition, Petitioners have cited a line of cases running from the landmark decisions of *Pennoyer v. Neff*, 25 U.S. 714 (1878) and *International Shoe Company v. State of Washington*, 326 U.S. 310 (1945) through the recent case of *Shaffer v. Heitner*, ___ U.S. ___, 97 S.Ct. 2569 (1977). Respondent would not quarrel with the legal principals enunciated in these cases but would contend that Petitioners' reliance on them is sorely misplaced when considered in light of our present case. The cases relied upon by the Petitioners all involve the forum Court attempting to exercise personal jurisdiction over non-resident defendants by means of constructive service outside of the forum jurisdiction. In our present case we have actual, valid personal service on the general partner of the defendant partnership, the requisite "minimal contact" being the fact that the general partner resided in Virginia and thus, as set out in the *Milliken* case, Virginia:

> . . . which accords him privileges and affords protection to him and his property by virtue of his domicile may also extract reciprocal duties. "Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable" from the various incidences of state citizenship. (Page 463)

Based on the above, your Respondent would submit that the domicile of the partnership can be the domicile of the general partners and that your Respondent could have proceeded either in Virginia or Maryland, where the other general partner, Carol Smith, resided. A case factually close on point to our case would be the case of *Sugg v. Thornton*, 132 U.S. 524, 10 S.Ct. 163 (1889), which involved a suit in Texas by Mr. Thornton against several defendants,

including a partnership composed of E. C. Sugg, a resident of Texas, and Iker Sugg, a resident of Wyoming. Texas had a statute similar to Virginia, which stated:

> Art. 1224. In suits against partners the citation may be served upon one of the firm, and such service shall be sufficient to authorize a judgment against the firm, and against the partner actually served. (Page 526)

E. C. Sugg was served in Texas and Iker Sugg was served in Wyoming under a Texas statute which allowed constructive service out of state upon a non-resident. The United States Supreme Court upheld the Texas statutes providing for a judgment against the resident partner and the partnership assets only. The *Sugg* case is identical to our present case also in that the non-resident partner appeared and challenged the judgment on the merits and having lost on the merits, the United States Supreme Court held that he could not then contest the proceedings on the grounds that the Court had no jurisdiction over him.

In our present case Caravel Office Building Company filed an Answer and Grounds of Defense (pp. 2b) and had its day in Court and your Respondent would submit that there was no Federal question presented here since the appearance by Caravel Office Building Company precluded it from raising constitutional questions concerning the judgment.

In further support, your Respondent would cite to the Court the case of *Adam v. Saenger*, 30 U.S. 62, 58 S.Ct. 456, 82 L.Ed. 649, wherein the Court held:

> But if the judgment on its face appears to be a "record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to

> be presumed unless disproved by extrinsic evidence, or by the record itself." (Page 62)

The Petitioners have cited no authority that would hold that the Circuit Court of Arlington County, Virginia did not have personal jurisdiciton over the Petitioners nor have they rebutted the presumption that the trial Court had jurisdiction over the case and the parties.

2. Was the full faith and credit clause of the Constitution of the United States violated?

(a) Did the forum err in applying its procedural laws?

Petitioners have continually claimed that the procedural law of the District of Columbia should have also been applied by the forum state. Your Respondent contends that the choice of law provision in the note referred to the substantive law between the parties.

Your Respondent submits that the recitation of the note that it is to be governed by the laws of the District of Columbia is a choice of law provision agreed upon by the parties with regard to the substantive law only and that questions concerning the Statute of Limitations are matters of remedy and procedure.

In *Hospelhorn v. Corbin,* 179 Va. 348, 19 S.E.2d 72 (1942), the Virginia Supreme Court embraced the general rule that the Statute of Limitations of the jurisdiction where an action is brought is controlling and not the Statute of Limitations of the jurisdiction in which the contract is made.

In *Norman v. Baldwin,* 152 Va. 800, 148 S.E. 831 (1929) the Virginia Supreme Court held that, with regard to a general Statute of Limitations, the forum law will govern in determining whether an action is time-barred, since general

Statute of Limitations have no extra territorial effect, but relate solely to remedy. In *Willard v. Aetna,* 213 Va. 481, 193 S.E.2d 776 (1973), the Virginia Supreme Court held that:

> In transitory actions, matters of substantive law are governed by the law of the place of the transaction, and matters of remedy and procedure are governed by the law of the place where the action is brought. The court of the forum state determines according to its own conflict of laws rules whether a question of law is substantive or procedural. (Page 483)

Respondent submits that in the present case this is a transitory action involving a general Statute of Limitations and thus, the trial Court correctly construed the procedural law of Virginia to govern this case. 16 Am.Jur.2d Conflict of Laws, §50, §76. An even stronger statement of this principal is the New York case of *Kerr v. Tagliavia,* 168 N.Y.S. 697 (1907), in which the Court held that the law of the forum governs as to remedial matters, irrespective of the intent of the parties. The policy behind these holdings has been aptly set forth in the case of *Bournias v. Atlantic Maritime Co.,* 220 F.2d 152, a Second Circuit Court of Appeals case arising out of New York, in which the Court held:

> While it might be desirable, in order to eliminate "forum shopping," for the forum to apply the entire foreign law, substantive and procedural or at least as much of the procedural law as might significantly affect the choice of the forum – it has been recognized that to do so involves an unreasonable burden on the judicial machinery of the forum and perhaps more significantly, on the local lawyers involved; consequently, for at least

> some questions the law applied is that of the forum, with which the lawyers and judges are more familiar and which can be administered more conveniently. (Page 154)

Clearly, under Virginia procedural law, the trial Court was correct in overruling the Petitioners' plea to the Statute of Limitations. The Petitioners executed three acknowledgement of the debt (pp. 12b, 13b, 14b.) and under §8-25, Code of Virginia, 1950, as amended, the trial Court was correct in finding these to be an acknowledgment of the debt. Respondent further submits that even if the trial Court applied the District of Columbia procedural law with regard to the Statute of Limitations, the law provides that an unequivocable acknowledgment of the debt constitutes an implied promise to pay and takes the contract out of the Statute of Limitations. *T. B. Hoffelfinger v. Gibson,* 290 A.2d 390 (1972). Thus, the Petitioners' acknowledgment of the debt in question is sufficient under either Virginia or District of Columbia law to extend the Statute of Limitations.

(b) Did the forum follow the substantive laws of the District of Columbia in awarding judgment to the Respondent?

Your Respondent submits that the Virginia courts did not violate the full faith and credit clause of the United States Constitution. In the very first paragraph of the trial Court's letter decision of December 23, 1976, the Court found that because of the language of the note in question, the substance of the law of the District of Columbia should apply and in furtherance of this proposition, the Court cited numerous District of Columbia cases and District of Columbia statutory law. The trial Court then turned its attention to the facts of the case and found, as your Respondents contended in the trial Court. that the payment of the $9,000.00 in question to the Respondent was intended by the parties not to be a fee for the loan of money but rather a fee for the sale of Respondent's credit upon which Petitioners could rely in completing their financial plans. The $9,000.00 fee, as the trial Court found, was due immediately upon the execution of the commitment agreement, (pp. 15b), on January 27, 1969, although at that time it was not known if Respondent would actually fund any loan that might be necessary or not. The note securing this loan was dated February 28, 1969, but was not fully funded for several years thereafter. The Court found that the parties intended this commitment fee to be due and payable regardless of whether any loan was ever made and regardless of who made it. In support of this decision your Respondent submits the trial court was correct in relying upon the District of Columbia case of *Oliver v. United Mortgage Company, Inc.,* 230 A.2d 722 (1967) that not every payment in connection with the loan of money is interest. Your Respondent further contends that finding no District of Columbia case factually on point with our present case, the trial Court was correct in applying general law as to whether the payment constituted interest or not. In determining whether the parties intended to commit usury, the substantive law of the District of Columbia provides that the burden of proof was upon the Petitioners to prove that the contract was usurious. *Industrial Bank of Washington v. Page,* 249 F.2d 938 (1957). Finding no District of Columbia case on point as to whether the Respondent's intent or knowledge to commit usury was relevant, the trial Court was correct in looking to the general law of the land which provides that the burden was upon the Petitioners to prove the parties intended usury. 91 C.J.S. Usury ¶114.

Respondent would contend that Petitioners' reliance on *Alaska Packers Association v. Industrial Accident Commission of California*, 294 U.S. 532 (1935) is certainly misplaced since that case involved a state court decision as to the application of conflicting statutes as to the forum Court and the Court where the contract was to be performed. In our present case, there is no conflict between statutes and the trial Court applied the District of Columbia substantive law to the facts in evidence. Respondent contends that the trial Court was correct in applying these facts to the substantive District of Columbia law and where there was none, to the general law of the land; and the Supreme Court of Virginia has found no error in the trial Court's application of the facts in the law. See *Chicago and Alton Railway v. Wiggins Ferry Company, supra.*

Respondent would further submit that therefore there is no substantial Federal question presented upon which this Court should act.

In essence, the Petitioners, while attempting to mount a constitutional attack are in essence attacking the factual judgment of the trial Court. The correctness of this judgment was raised before the Supreme Court of Virginia and by its affirmance of the trial Court, the Supreme Court of Virginia has ruled there has been no manifest error or misconduct. *Pollard v. Bagby, Inc. v. Morton G. Thalhimer, Inc.*, 169 Va. 529, 194 S.E. 534 (1938); *Pryor v. East*, 150 Va. 231, 142 S.E. 729 (1928).

This being the case, Respondent submits that the full faith and credit clause of the Constitution of the United States precludes the Petitioners from arguing, in this Court, the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on

which the judgment is based. *Fauntleroy v. Lum*, 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039; *Milliken v. Meyer, supra.*

In our present case since there are no constitutional infirmities, whatever misstatements of law may underlie the trial Court's judgment, that judgment is conclusive as to all the *media concludendi*. *Fauntleroy v. Lum, supra.*

In summary, the Petitioners Hynning and Caravel Office Building Company were served with process in conformity with the applicable state statutes, the constitutionality of which have not been challenged. The method of service in our present case upon both Petitioners as both provided for and actually issued was recognizably calculated to give the Petitioners notice of the proceedings and an opportunity ity to be heard. Thus, the due process notions of fair play and substantial justice are satisfied. *McDonald v. Mabee*, 243 U.S. 90, 37 S.Ct. 343, 61 L.Ed. 608.

In our present case not only did the Petitioners receive notice, but they availed themselves of the opportunity to defend this cause and having lost this matter in the trial Court, they availed themselves of the opportunity of appeal to the highest court of the State of Virginia.

CONCLUSION

Your Respondent respectfully submits that there are no substantial questions involved in this case; that the Petitioners have not shown any good or sufficient reason why Certiorari should be granted; that the judgments of the Trial Court and the Supreme Court of Virginia are plainly right and that the Petition for Writ of Certiorari should be denied

Griffin T. Garnett, III
Counsel for Respondent
2000 North 16th Street
Arlington, Virginia 22216

APPENDIX

§8-13. Limitation of personal actions generally.—Every action to recover money which is founded upon an award, or on any contract, other than a judgment or recognizance, shall be brought within the following number of years next after the right to bring the same shall have first accrued, that is to say:

If the case be upon any contract by writing under seal, whether made by a public officer, a fiduciary or private person within ten years;

If it be upon an award or upon a contract in writing signed by the party to be charged thereby, or by his agent, but not under seal, within five years; and

If it be upon any other contract express or implied within three years, unless it be an action by one partner against his co-partner for a settlement of the partnership account, or upon accounts concerning the trade of merchandise between merchant and merchant, their factors, or servants, in either of which cases the action may be brought until the expiration of five years from the cessation of the dealings in which they are interested together, but not after;

Provided that the right of action against the estate of any person hereafter dying, or upon any such award or contract, which shall have accrued at the time of his death, or the right to prove any such claim against his estate in any suit or proceeding, shall not in any case continue longer than five years from the qualification of his personal representative, or if the right of action shall not have accrued at the time of the decedent's death, it shall not continue longer than five years after the same shall have so accrued; and

Provided further that the limitation to an action or other proceeding for money on deposit with a bank or any person or corporation doing a banking business shall not begin to run until a request in writing be made therefor, by check, order, or otherwise.

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEGLING, INC.,
A Maryland Corporation
7000 Wisconsin Avenue,
Chevy Chase, Maryland

Complainant,

v.

THE CARAVEL OFFICE BULIDING COMPANY
A District of Columbia partnership,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036

and

CLIFFORD J. HYNNING,
3700 N. Military Road,
Arlington, Virginia

and

CAROL H. SMITH,
1034 N. Calvert Street,
Baltimore, Maryland

Defendants.

In Chancery No. 26191

ANSWER OF DEFENDANT

Comes now Clifford J. Hynning, appearing pro se, individually, and as managing general partner of Caravel Office

Building Company (hereinafter called "Caravel") to make this answer. Insofar as this answer is on behalf of Caravel, it is made by virtue of a special appearance made by Clifford J. Hynning, as managing general partner thereof, and in no way prejudices the right of Caravel to raise questions as to the validity of the service of process in a motion filed herewith to quash such service insofar as Caravel is concerned.

Defendants admit, deny and allege as follows:

FIRST DEFENSE

The complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

The right of action set forth in the complaint did not accrue within three years next before the commencement of this action.

THIRD DEFENSE

Defendants admit that the allegations contained in complaint paragraphs 1 and 2; admit that defendant Clifford J. Hynning is a general partner in Caravel and is a resident of Arlington County as alleged in complaint paragraph 3, but further state that all Hynning's office and other business activities as general partner of said partnership are conducted in the District of Columbia and are not carried on in any office or through any other activities in Virginia; deny each and every other allegation contained in the complaint.

WHEREFORE, defendants, having fully answered, demand that judgment be entered in their favor dismissing plaintiff's complaint with prejudice.

Respectfully submitted,

/s/ Clifford J. Hynning
CLIFFORD J. HYNNING,
pro se, and as Managing General
Partner of CARAVEL OFFICE
BUILDING COMPANY, 1555
Connecticut Avenue, N.W.
Washington, D.C. 20036
Suite 301,
Telephone N. 232-0775

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC., A Maryland Corporation, Complaintant	
v.	IN CHANCERY NO. 26191
THE CARAVEL OFFICE BUILDING COMPANY, A District of Columbia Partnership	AT LAW NO. 18633
and	
CLIFFORD J. HYNNING	
and	
CAROL H. SMITH, Defendants	

NOTICE OF APPEAL
AND ASSIGNMENT OF ERROR

To: David Bell
Clerk of the Court
Circuit Court of Arlington County
Arlington, Virginia 22201

NOTICE IS HEREBY GIVEN that the defendants, THE CARAVEL OFFICE BUILDING COMPANY, and CLIFFORD J. HYNNING appeal from a Final Judgment entered by this Court of the 14th day of January, 1977, and announce their intention of applying for a Writ of Error to the Supreme Court of Virginia.

ASSIGNMENT OF ERROR

The Trial Court erred:

1. In granting judgment to the Plaintiff.
2. In ruling that the loan transaction which was the subject of this case was not usurious.
3. In ruling that the $9,000.00 front end fee paid by the borrower (defendants) to the lender (plaintiff) does not constitute "interest".
4. In ruling that the loan transaction was not usurious after acknowledging that, in addition to the maximum legal rate of interest, the lender required the borrower to pay a fee prior to the lender funding the loan.
5. In ruling that the $9,000.00 front end fee was a loan commitment.
6. In ruling that a loan commitment fee does not constitute interest under circumstances where the fee goes to the same person who receives the interest.
7. In ruling that the intent of the parties is determinative of whether a front end fee constitutes interest or whether a loan transaction is usurious.
8. In ruling that an otherwise usurious loan transac-

tion was made legal because of the intent – or the absence of bad intent – by the parties or the lender.

9. In ruling that a front end fee that was paid to the lender in connection with making the loan does not constitute interest because the loan was part of a total financing package.

10. In ruling that a front end fee paid to the eventual lender in connection with a loan is not interest as long as the recipient of the fee was not obligated to actually fund the loan at the time the fee was paid.

11. In ruling that the party alleging usury must prove a corrupt intent to conceal it under an ostensibly lawful contract or transaction.

12. In ruling that the evidence was insufficient to establish that the loan transaction was usurious.

THE CARAVEL OFFICE BUILDING COMPANY and CLIFFORD J. HYNNING

By: /s/ Peter K. Stackhouse

Peter K. Stackhouse, Counsel for defendants, The Caravel Office Building Company and Clifford J. Hynning

TOLBERT, SMITH,
FITZGERALD & RAMSEY
2300 South Ninth Street
Arlington, Virginia 22204

By: /s/ Peter K. Stackhouse

Peter K. Stackhouse

[Certificate of service omitted in printing]

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC., a Maryland Corporation, Complainant,	)	
v.	)	IN CHANCERY #26191 AT LAW No. 18633
THE CARAVEL OFFICE BUILDING COMPANY, a District of Columbia Partnership and CLIFFORD J. HYNNING and CAROL H. SMITH, Defendants.	)	

SUPPLEMENTAL ASSIGNMENT OF ERROR

13. The Trial Court erred in refusing to dismiss this action based upon the defendants' motion that the Circuit Court of Arlington County was a forum non-conveniens.

14. That the Trial Court erred in failing to rule that the plaintiff was barred from using the Virginia Courts as a forum for this action, because of the choice of law provision agreed to by the parties in the promissory note.

15. The Trial Court erred in refusing to apply the procedural law of the District of Columbia.

16. The Trial Court erred in refusing to apply the applicable District of Columbia statute of limitations which would have resulted in a dismissal of this action.

THE CARAVEL OFFICE BUILDING COMPANY and CLIFFORD J. HYNNING

By: /s/ Peter J. Stackhouse
Counsel

TOLBERT, SMITH, FITZGERALD
& RAMSEY
2300 South Ninth Street
Arlington, Virginia 22204

By: /s/ Peter K. Stackhouse
Peter K. Stackhouse

[Certificate of service omitted in printing]

INDEX TO PETITION

12b

COUNCILOR, BUCHANAN & MITCHELL
CERTIFIED PUBLIC ACCOUNTANTS
3900 WISCONSIN AVENUE
WASHINGTON, D.C. 20016

Caravel Office Building Co.
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036

June 22, 1973

In auditing the books of Bagley, Hartung, Mahoney & Lebling, Inc.

we find the status of your account(s) as of May 31, 1973, to be as follows:

Owing by you on open account	$
Owing by you on notes	$
Owing to you on open account	$
Owing to you on notes	$
Owing by you on construction loan #TF-25	$ 79,076.42
Accrued interest at 8%	$ 5,271.80

Will you please advise on the form below whether this statement is correct, using the enclosed stamped envelope for your reply. Do not send remittance with this confirmation.

APPROVED: COUNCILOR, BUCHANAN & MITCHELL

We certify that the statement of our account(s) as shown above is correct, with the following exceptions:

Caravel Office Bldg Co.

17 Aug, 1973 By Clifford Hynning
Mgl. Gen. Partner
Plaintiffs Ex # 4

13b

COUNCILOR, BUCHANAN & MITCHELL
CERTIFIED PUBLIC ACCOUNTANTS
3900 WISCONSIN AVENUE
WASHINGTON, D.C. 20016

DISTRICT COURT
SEP 6 1974
RECEIVED

Mr. Clifford J. Hynning
Caravel Office Building Co.
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036

SECOND REQUEST

August 20, 1974

In auditing the books of Bagley, Martin, Mahoney & Lebling, Inc.

we find the status of your account(s) as of May 31, 1974, to be as follows:

Owing by you on open account	$
Owing by you on notes	$
Owing to you on open account	$
Owing to you on notes	$
Accrued interest at 8%	$ 11,597.92
	$

Will you please advise on the form below whether this statement is correct, using the enclosed stamped envelope for your reply. Do not send remittance with this confirmation.

APPROVED: COUNCILOR, BUCHANAN & MITCHELL

We certify that the statement of our account(s) as shown above is correct, with the following exceptions:

So far as I can tell from my records as of Dec 31, 1973, the above is substantially correct

Caravel Office Bldg Co

5 Sept, 1974 By Clifford Hynning
Mgn Gen. Partner
Plaintiffs Ex. # 4

COUNCILOR, BUCHANAN & MITCHELL
CERTIFIED PUBLIC ACCOUNTANTS
3900 WISCONSIN AVENUE
WASHINGTON, D.C. 20016

Caravel Office Bldg. Co.
Suite 301
1625 Connecticut Ave., N.W.
Washington, D.C. 20036

July 17, 1975

In auditing the books of Bogley, Harting, Mahoney & Lebling, Inc.

we find the status of your account(s) as of May 31, 1975, to be as follows:

Owing by you on open account	$
Owing by you on notes 2nd trust	$ 79076.49
Owing to you on open account	$
Owing to you on notes	$
Accrued interest	$ 1792.42
	$

Will you please advise on the form below whether this statement is correct, using the enclosed stamped envelope for your reply. Do not send remittance with this confirmation.

APPROVED: COUNCILOR, BUCHANAN & MITCHELL

We certify that the statement of our account(s) as shown above is correct, with the following exceptions:

Caravel Office Bldg Co
By Clifford Hynning
Mail Partner

, 19 By

Plaintiffs Ex. #6

BOGLEY, HARTING, MAHONEY & LEBLING, INC.
7000 Wisconsin Avenue
Chevy Chase, Maryland 20015

COMMITMENT

To: Caravel Office Building Company, Limited Partnership
Clifford J. Hynning, General Partner

Dear Mr. Hynning:

We are pleased to issue you a standby commitment in the amount of ~~$62,000.00~~ *($100,000)* subject to the following terms and conditions:

100,000
AMOUNT: ~~$62,000~~ to be funded between the date hereof and December 31, 1970, providing said funds are required and used for the purpose pf paying for tenant finishing in the office building to be constructed known as the Caravel Office Building, located at 1601 Connecticut Avenue, N.W., Washington, D.C. in Lots 60, 61 and 62, Square 111.

TERMS AND SECURITY: If said funds are called *$100,000* upon for disbursement, the interest rate on the ~~$62,000~~ will be at the best available rate to Bogley, Harting, Mahoney & Lebling, Inc. for this loan through Bogley's banking facilities plus an additional 2% annual interest rate (Example – bank collateral loan rate plus 8% plus 2% to Bogley – total annual rate of 10% on outstanding funds).

Bogley will charge for the standby commitment a fee of *9%* *$100,000* *9,000* ~~7%~~ of ~~$62,000~~ equivalent to ~~$4,340~~ which will be paid at the time of closing under the sale-leaseback commit-

ment with Sun Life Assurance Company of Canada on the subject property; said fee shall be declared as earned due and payable at the time of signing this commitment.

As securty for the subject loan, should funding be requested, Caravel Office Building Company and Clifford J. Hynning as general partner are to sign and Clifford J. Hynning to also sign personally a second deed of trust and note which will be secured by the above-captioned property and a term of said note and deed of trust will be for one year from the date of recording. As additional collateral, the deed of trust and note will also be secured as a second trust on improvements known as 1555 Connecticut Avenue, N.W., Square 112, Lot 800. It is understood that title to this property is in the name of Clifford J. Hynning as trustee under the Anchorage-Hynning Partnership. It is further understood that should said funding be required, the condition precedent pertaining to the recording of the second trust on the above-referred to properties that said second trust will be in an amount which will include $62,000 plus any amounts remaining unpaid on the original $47,500.00 second trust now secured by the property referred to above known as 1601 Connecticut Avenue, N.W. It is understood and a condition of this commitment that at the time of closing and funding of the Sun Life purchase and leaseback of the ground known as Lots 60, 61 and 62, Square 111 the outstanding princpal sum of Bogley $47,500 original loan with the present balance of money drawn as $40,900 will be curtailed by $20,000 leaving an outstanding balance of $20,900; and which will remain at the present time as a second trust against the leasehold estate known as Lots 60, 61 and 62, Square 111.

Clifford J. Hynning as general partner of Anchorage-Hynning Partnership and general partner of the Caravel

Office Building Company covenants and agrees that he will not encumber by virtue of the second trust financing any of the above two identified properties - 1601 Connecticut Avenue, N.W. and 1555 Connecticut Avenue, N.W. unless the total Bogley financing as indicated above has been completely paid in full. * (See Below)

A further condition of this commitment is that any money advanced by Sun Life Assurance Company or any other banking institution for tenant finishing will be used to pay off in full the Bogley $62,000 trust; and furthermore, that if sufficient monies are not available through those sources, then Bogley will have first claim on the sum of approximately $138,000 representing the difference between the floor amount and the top amount of Sun Life Assurance Company's leasehold permanent commitment, identified under Commitment #DC 713-632 dated August 7, 1968. It is specifically understood that this money is to be used for the payment in full of the total Bogley obligations if said funds are available during the one year term of the Bogley second trust.

If in the event there would not be sufficient funds available to pay the Bogley loan in full by virtue of the holdback amount of $138,000 under the Sun Life commitment and the term of the second trust has not expired, all net rental income from the office building to built at 1601 Connecticut Avenue, N.W. will be assigned to Bogley for the purpose of paying interest first and the balance to principal curtailment. It is further understood that by virtue of Bogley's issuance and Hynning's, as general partner, acceptance of this commitment he is relinquishing his prior right to draw down the undisbursed portion of the $47,500 loan with a principal balance outstanding of $40,900. It is further understood that all fees, interest payments and the Bogley $25,000 second trust, as well

as all financing arranged by or through the Bogley Mortgage-Banking Company will be paid in its entirety at the time of the closing of the Sun Life purchase and lease-back commitment.

This commitment is subject to our counsel's approval of the title to the above-referred properties as being marketable and that Bogley would, in fact, have no legal impediments to its second trust other than Sun Life Assurance Company's permanent loan on the leasehold estate for the building to be constructed at 1601 Connecticut Avenue, N.W. and the first trust original loan of $360,000 made by the Equitable Life Assurance Society of the United States, secured by property located at 1555 Connecticut Avenue, N.W.

It is understood that this commitment is to be satisfactory and acceptable to National Savings and Trust Company, the construction lender, as same is being obtained to satisfy their requirements under the conditions of the of the construction loan commitment.

We trust that the above commitment satisfies your requirements and we will appreciate your accepting said commitment as indicated below.

Very truly yours,

BOGLEY, HARTING, MAHONEY
& LEBLING, INC.

/s/ Carville J. Cross
Carville J. Cross

CJC/lb

I hereby accept the above commitment and all of its terms and conditions.

1-22-69 — Date
/s/ Clifford J. Hynning — Clifford J. Hynning, personally

ANCHORAGE-H

ANCHORAGE-HYNNING PARTNERSHIP

1-22-69 — Date
/s/ Clifford J. Hynning — Clifford J. Hynning, Trustee and General Partner

CARAVEL OFFICE BUILDING COMPANY

1-22-69 — Date
/s/ Clifford J. Hynning — Clifford J. Hynning, General Partner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Case No. 77-1044

CARAVEL OFFICE BUILDING COMPANY,
A District of Columbia limited partnership, and
CLIFFORD J. HYNNING,
Managing General Partner of said limited partnership,
Petitioners,

v.

BOGLEY HARTING MAHONEY &
LEBLING, INC., a Maryland corporation,

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

FRANK E. BROWN, JR.
Barham, Radigan, Suiters & Brown
2009 North Fourteenth Street
Arlington, Virginia 22216

CLIFFORD J. HYNNING
Attorney for Petitioners
and also appearing pro se,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: 232-0775

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---

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

REPLY

Petitioners have argued that the Virginia courts erred in failing to recognize any Federal question under the United States Constitution in the exercise of state court jurisdiction over a non-resident limited partnership, without any minimal contracts with Virginia, merely by service of process on a partner who happens to reside in that state without conducting any partnership business there. In its opposition,

respondent contends (at p. 3) that "the Petitioners never presented to the Circuit Court of Arlington County, Virginia or the Supreme Court of Virginia, any Federal question of substance" and further (at p. 11) that "there was no Federal question presented here since the appearance by Caravel Office Building Company precluded it from raising constitutional questions concerning the judgment."

These contentions by respondent are readily refuted on the record in the courts below: Thus at the very threshhold of the Virginia litigation, the petitioners appeared:

(a) to move "to quash service on Caravel Office Building Company, a District of Columbia partnership," printed at pp. 19a-20a, together with a supporting affidavit that Caravel had engaged in no business or activities in Virginia (printed at pp. 21a-22a).

(b) to file a plea in abatement that the limited partnership "performs no other functions or activities" than the ownership, management, and leasing of a District of Columbia office building, printed at pp. 23a-26a, and

(c) to file an answer "made by virtue of a special appearance," printed by respondent in its opposition at pp. 2b-4b.

The motion and plea were summarily overruled by the Arlington Circuit Court (printed at pp. 15a-16a) without any inquiry into the minimum contacts between the non-resident partnership of Caravel Office Building Company and Virginia. The Arlington Circuit Court later ruled that "in matters of remedies and procedure in this cause the law of the Commonwealth of Virginia should govern," printed at pp. 8a-9a. Petitioners took formal objections and exceptions, as were noted on the face of the above

Orders. The argument on jurisdiction was further pressed on appeal to the Supreme Court of Virginia that Virginia lacks state court jurisdiction over a non-resident partnership whose "*sole* [italics in the original] contact with Virginia was the residence of one of Caravel's general partners," printed herein at p. 28a as an excerpt of p. 21 from the petition for appeal in the Supreme Court of Virginia. All these motions, pleas and arguments were expressed in terms of the minimal contact test of *International Shoe, Hanson* and *Shaffer*. Also attached hereto at pp. 29a, *et seq.* is the complaint, which makes clear in paragraphs 3, 5, 6, and 7, that petitioner Hynning was sued only in his representative capacity as general partner of a non-resident partnership.

From the above it is clear that the issue of state court jurisdiction over a non-resident partnership under the United States Constitution was both raised in the trial court and pursued in the Supreme Court of Virginia, and is therefore properly before this Court.

Federal decisional law on partnerships arises almost exclusively out of litigation which must satisfy the requirements of complete diversity of citizenship of the parties for purposes of Federal District Court jurisdiction. It is suggested that such precedents have no application here, as specifically recognized in Rule 17(b)(1) of the Federal Rules of Civil Procedure where "a partnership or other unincorporated association, which has no such capacity by the law of such state [forum], may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States. . . ." Cf. *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922), an unincorporated association similar to a partnership under

the diversity cases. The test for state court jurisdiction over a non-resident partnership is the "minimal contact" test of *International Shoe* and *Shaffer*.

By way of assistance to the reader, petitioners set forth what they term an "errata" sheet for respondent's opposition:

1. The citation of *Milliken v. Meyer*, 312 U.S. 712, p. 7 of respondent's opposition refers to a denial of rehearing, whereas the case on its merits is reported at 311 U.S. 457.

2. *Adam v. Saenger*, 30 U.S. 62, cited by respondent on p. 11 of its opposition, cannot be found in Volume 30, but is reported at 303 U.S. 62.

3. The citation of *Oliver v. United Mortgage Company, Inc.*, 230 A.2d 722 (1967) by respondent on p. 15 of its opposition as case authority that "the trial court was correct in relying upon" is mystifying, since *Oliver* can nowhere be found in the opinion of the trial court, printed at pp. 10a-14a, and so "correctly set out in Petitioners' Appendix A," according to respondent, p. 2.

4. Essential punctuation, namely, a period following the fourth word of the third line from the bottom of p. 9 of respondent's opposition is missing, for assuredly respondent cannot contend that petitioner Hynning conceded jurisdiction over the partnership, but only "conceded" in his answer that he was a general partner of the non-resident partnership.

For the rest we rely on the petition that a writ of certiorari issue to the Supreme Court of Virginia.

Respectfully submitted,

FRANK E. BROWN, JR.
Barham, Radigan, Suiters & Brown
2009 North Fourteenth Street
Arlington, Virginia 22216

CLIFFORD J. HYNNING
Attorney for Petitioners
and also appearing pro se,
1555 Connecticut Ave., N.W.
Washington, D.C. 20036
Telephone: 232-0775

APPENDIX

EXCERPT FROM PETITION FOR APPEAL TO THE SUPREME COURT OF VIRGINIA, p. 21

III. THE CIRCUIT COURT OF ARLINGTON COUNTY SHOULD NOT HAVE TAKEN COGNIZANCE OF THIS CASE SINCE IT WAS A PURELY LOCAL ACTION RELATING ONLY TO THE DISTRICT OF COLUMBIA.

As has been previously stated, this was an action on a promissory note evidencing a loan made to a District of Columbia partnership for the purpose of constructing a large commercial office building in the District of Columbia and was secured by real property located in the commercial zone of Washington. The note was delivered in the District of Columbia and Caravel's exclusive business was the ownership and management of the Caravel Office Building in the District of Columbia, Further, the note specifically stated that it was to be governed by the laws of the District of Columbia in accordance with the choice of law provisions of the Uniform Commercial Code previously cited. All records of Caravel were located in the District of Columbia. The *sole* contact with Virginia was the residence of one of Caravel's general partners. The fact that neither the partnership nor the transaction had any contact with Virginia is shown by the fact that even with the long-arm statute, Bogley was unable to effect service of process on Carol H. Smith, a general partner and resident of Maryland, who also signed the note and trust.

* * * *

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC., A Maryland Corporation 7000 Wisconsin Avenue Chevy Chase, Maryland, *Complainant*,	
vs.	**IN CHANCERY NO._____**
THE CARAVEL OFFICE BUILDING COMPANY, A District of Columbia partnership SERVE: Clifford J. Hynning, General Partner 3700 North Military Road Arlington, Virginia	
and	
CLIFFORD J. HYNNING 3700 North Military Road Arlington, Virginia	
and	
CAROL H. SMITH 1034 North Calvert Street Baltimore, Maryland	

BILL OF COMPLAINT

COMES NOW the Complainant, by counsel, and in support of this Bill of Complaint states as follows:

1. The Complainant, BOGLEY, HARTING, MAHONEY & LEBLING, INC., hereinafter referred to as BOGLEY, is a Maryland corporation engaged in the mortgage brokerage business and has been so engaged and licensed in said business in the District of Columbia, Maryland and Virginia for anumber of years.

2. The Defendant, THE CARAVEL OFFICE BUILDING COMPANY, hereinafter referred to as CARAVEL, is a District of Columbia limited partnership.

3. The Defendant, CLIFFORD J. HYNNING, is a general partner in said partnership and is a resident of Arlington County, Virginia.

4. The Defendant, CAROL H. SMITH, is a general partner in said partnership and is a resident of Baltimore, Maryland.

5. On February 28, 1969, the Defendant CARAVEL through its partners Defendants CLIFFORD J. HYNNING and CAROL H. SMITH executed a Note payable to the Complainant in the amount of ONE HUNDRED THOUSAND DOLLARS, ($100,000), to be paid on December 31, 1970. A copy of said Note is attached hereto as Exhibit "A" and made a part hereof.

6. The Defeddant CARAVEL through its partners the Defendants CLIFFORD J. HYNNING and CAROL H. SMITH, secured the above mentioned Note by a Deed of Trust dated February 28, 1969. A copy of said Deed of Trust is attached hereto as Exhibit "B" and made a part hereof.

7. The Defendant CARAVEL through its managing general partner, CLIFFORD J. HYNNING, executed an extension of said Note to payment on demand and further

waiving demand, notice or protest. A copy of said extension is attached hereto as Exhibit "C" and made a part hereof.

8. Demand has been made and defautl has been made in payment of said Note and the balance is now due as evidenced by the Statement of Account attached hereto as Exhibit "D" and made a part hereof.

WHEREFORE, the Complainant, BOGLEY, demands judgment against the Defendants jointly and severally in the principal amount of SEVENTY-NINE THOUSAND AND SEVENTY-SIX AND 48/100 DOLLARS, ($79,076.48), with interest at the rate of eight percent per annum from the 14th day of July, 1972, reasonable counsel fees as provided for in the Deed of Trust and court costs.

BOGLEY, HARTING, MAHONEY
& LEBLING, INC.

By: s/s GRIFFIN T. GARNETT
Griffin T. Garnett, III
Its Counsel

GARNETT & KOSTIK

BY: s/s GRIFFIN T. GARNETT, III
Griffin T. Garnett, III
Counsel for Complainant